

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**GERARDO VILLALPANDO,**                            )  
    )  
    )  
**Plaintiff,**    )  
    )  
    )  
**v.**    )      **Case No. CIV-15-889-D**  
    )  
    )  
**ENID POLICE DEPT.,**                                )  
**OFFICER AARON BARBER,**                        )  
    )  
    )  
**Defendants.**                                        )

**REPORT AND RECOMMENDATION**

Plaintiff filed a civil rights suit, Doc. 1, and United States District Court Judge Timothy D. DeGiusti referred the matter to the undersigned Magistrate Judge for initial proceedings pursuant to 28 U.S.C. § 636(b)(1)(B), (C). Doc. 4. Based on Plaintiff's failure to make his initial partial filing fee payment, the undersigned recommends the court dismiss the action without prejudice.

**I. Analysis.**

After multiple attempts, Plaintiff eventually cured his motion for leave to proceed in forma pauperis and on September 21, 2015, the court granted the motion and ordered Plaintiff to make an \$8.14 initial partial filing fee payment on or before October 13, 2015. Doc. 12. On October 21, 2015, the undersigned noted Plaintiff's lack of payment and gave him until November 10, 2015, in which to submit the \$8.14. Doc. 13. The undersigned cautioned

Plaintiff his failure to pay would likely result in the court's dismissing his action without prejudice. *Id.* Later seeing Plaintiff had submitted a notice of change of address on October 21, 2015, the undersigned extended Plaintiff's payment deadline to November 19, 2015, and ordered the Clerk of the Court to re-send the second order to cure to Plaintiff's new address. Doc. 16.

Plaintiff's last deadline has passed and he has yet to make his initial partial filing fee payment. So, the undersigned recommends the court dismiss Plaintiff's action without prejudice to refiling. *See* LCvR 3.3(e) ("Failure to pay the filing fees by the date specified, to seek a timely extension within which to make the payment, or show cause in writing by the date specified for payment shall be cause for dismissal of the action without prejudice to refiling."); *see also* LCvR 3.4(a); *Freeman v. Colo. Dep't of Corrs.*, 396 F. App'x 543, 543-44 (10th Cir. 2010) (affirming the district court's dismissal of inmate's complaint after plaintiff failed to "pay the initial partial filing fee" or "show cause why [he] could not pay the fee").

## **II. Recommendation and notice of right to object.**

For the reasons set forth above, the undersigned recommends the court dismiss the complaint without prejudice.

The undersigned advises Plaintiff of his right to file an objection to the report and recommendation with the Clerk of this Court by December 22,

2015, in accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2).

The undersigned further advises Plaintiff that failure to make a timely objection to the report and recommendation waives the right to appellate review of both factual and legal questions contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

The court's adoption of this recommendation will terminate the referral in the present case.

ENTERED this 2nd day of December, 2015.



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SUZANNE MITCHELL  
UNITED STATES MAGISTRATE JUDGE